

**Remarks/Arguments:**

In response to the final Office Action dated November 17, 2008, Applicants provide the following remarks in support of this preliminary amendment. Claims 1 through 18 are pending in this application.

The Office Action noted as an informality that claim 1 recites language of “the head of a wearer” as lacking antecedent basis. As suggested by the Office Action, Applicants have revised and amended the language of claim 1 to correct for this informality and to identify within the preamble of claim 1 that the apparatus is to be worn by a wearer. Accordingly, Applicants respectfully request that this informality issue be withdrawn.

The Office Action also rejected independent claims 1, 3 through 5, 7, 8, 11, 12, 13, and 17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,179,735 (“Thomanek”) in combination with U.S. Patent Application Publication No. US 2004/0070823 A1 (“Radna”), in further combination with newly cited U.S. Patent No. 5,469,578 (“Mattes”), and now in still further combination with newly cited U.S. Patent No. 7,207,531 (“Piontkowski”). Dependent claims 2, 6, 9, 10, 14, 15, 16, and 18 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over the new grouping of patents and patent application including *Thomanek, Radna, Mattes, and Piontkowski* in combination with one or more additional secondary references.

A. Claim 1 Recites Patentable Subject Matter

As currently pending and amended, claim 1 recites:

An apparatus for head mounting gear for hands free operation by a wearer, comprising:

a head mounting means comprising a single, non-rigid encircling band adapted to substantially encircle the wearer’s head at the wearer’s forehead region, and a non-rigid top band adapted to go over the top of the head of the wearer and connected to said single, non-rigid encircling band at the back of the wearer’s head;

a mounting bracket mounted to said non-rigid encircling band and to said top band, said mounting bracket having a pivot means;

a support bar having a proximal and distal end, said support bar being pivotally mounted at its proximal end to said pivot means of said mounting bracket;

said support bar being lockable by a detent mechanism in a position for use and a position for storage;

a quick release mounting mechanism mounted on the distal end of said support bar;

gear mounted to said quick release mounting mechanism being selected to be binoculars or a range finder; and

wherein said gear may be used without being held by hand. (Emphasis added to show amended language).

The claim 1 recited language specifically describes that a single, non-rigid encircling band “substantially” encircles the wearer’s head at the forehead region of the wearer. Claim 1 further describes that a non-rigid top band goes over the top of the wearer’s head and connects to the non-rigid encircling band at the back of the wearer’s head. The specification support and description for these disclosures are shown at page 6, first and second paragraph noting that “the encircling band 14 and headband 16 are provided with length adjustment means, which may be any suitable means,” and by reference to and as illustrated within each of Figs. 1, 2, and 3. Those figures specifically show the encircling band 14 being placed in the region of the wearer’s forehead, and substantially encircling the wearer’s head at the forehead region. “Substantially” means, as shown in the figures, that the band encircles the wearer’s entire head, at the forehead region, except for the front mounting bracket that is only at the very front of the wearer’s head. There are no other elements attached or connected to the encircling band 14 to “substantially encircle” the wearer’s head. Moreover, as previously noted and highlighted, the encircling band 14 does not at any point extend to the lower part of the wearer’s cranium or lower portions of the wearer’s head.

By contrast to the pending disclosure and claims, *Thomanek* teaches and shows a “head piece 47 [] formed of a laminated structure.” *Thomanek*, col. 8, lines 59 through 63. The head piece 47 is made of several distinct elements, including a “U-shaped band portion 120,” a “back pad 126,” a “top webbing or strap 130,” and “side webbing” or a “pair of side straps 131.” As specifically disclosed by *Thomanek*, the head piece, including the U-shaped band portion 120, is

made from a “carbon textile,” col. 10, lines 3 through 5, using an epoxy and hardener. *Thomanek* describes the head piece as being “stiff” or rigid. *Thomanek*, col. 10, lines 23 through 24.

As previously noted, and as acknowledged within the Office Action, two points of distinction are that there is no encircling band in the *Thomanek* invention that goes around the wearer’s forehead region. Moreover, there is no top band in the *Thomanek* invention that connects to a mounting bracket and to any encircling band. In *Thomanek*, the side straps 131 cross behind the wearer’s head *below or in the vicinity of the wearer’s ears* and then connect to a chin piece 132.

Accordingly, by specific design, the *Thomanek* head piece does not have any encircling band nor any top band that connect to each other at the back of the wearer’s head, and then to a mounting bracket. Moreover, there is no suggestion or motivation in *Thomanek* for the head piece to include any encircling band to be substantially worn around the wearer’s forehead region, and there is no suggestion or motivation in *Thomanek* for a top band to be connected to any encircling band.

Similarly, the *Radna* patent application discloses the use of “any type of known headgear.” *Radna*, page 3, paragraph [0039]. The description of the *Radna* headgear necessary to hold the video-recording mechanism for surgery, is that the headgear includes “a front band 2 and a headband 3, mounted on the head of the user. The frontal band 2 and/or the headband 3 may be made of a flexible hard plastic material that is easy to clean and disinfect.” (*Radna*, page 3, paragraph [0039]) (emphasis added).

As in the *Thomanek* patent, there is no suggestion or motivation provided in the *Radna* patent application to use a flexible single band to substantially encircle the entire of the wearer’s head in the region of the wearer’s forehead, and further having a second single band to go over the top of the wearer’s head to connect to any mounting bracket. Both the *Thomanek* patent and *Radna* patent application disclose the use of hard or rigid head pieces that are comprised of multiple interconnecting pieces and elements, most of which are constructed of rigid carbon textile or a rigid thermoplastic material. Moreover, the Office Action acknowledges that the “combined teachings of *Thomanek* and *Radna* lack the encircling band being a single encircling band completely encircling a head of a wearer at the wearer’s forehead region.” (Office Action, at 6). The pending application

discloses a much more simplified headgear comprising two interconnecting pieces, both made of a non-rigid and flexible strapping material.

As previously noted, the *Mattes* patent similarly does not disclose, show or teach the use of a single encircling band that is fully or even substantially located about the wearer's forehead region. As noted in the Office Action, the "headgear mount" is comprised of at least two elements, being cranial frame 22 and posterior girth strap 44. In the *Mattes* patent, and contrary to the description in the Office Action (noting "Mattes teach a conventional night vision goggle headgear mount . . . , wherein the headgear mount includes an encircling band . . . which encircles the head of the wearer at the wearer's forehead region"), there is not a unitary element encircling the wearer's head.

Indeed, *Mattes* discloses and explains the many interconnecting elements necessary to build the *Mattes* headgear mount. These elements include cranial frame 22 "positioned proximate the frontal tuber and temporal regions of the wearer's cranium," *Mattes*, col. 2, lines 61 through 62, and "[a] posterior girth strap 44 [having] a first end 46 and a second end 48. First end 46 of posterior girth strap 44 is attached to second looped end 42 of radial strap 38. Second end 48 of posterior girth strap 44 is secured to first looped end 40 of radial strap 38. Posterior girth strap 44 is positioned proximate the posterior pole region of the wearer's cranium when worn." *Mattes*, col. 3, lines 4 through 10.

Accordingly, the *Mattes* disclosure shows at least two elements, cranial frame 22 and posterior girth strap 44 necessary to build up the disclosed head gear that is required to hold the heavy goggles. As shown in Fig. 1, cranial frame 22 does not encircle the wearer's head at the wearer's forehead region. Instead, at the posterior region, cranial frame 22 is located at a much lower region of the wearer's head. Moreover, the cranial frame 22 has a pad 28 to provide the wearer with some comfort due to the weight of the goggles being held by the headgear mount. It is a different element, posterior girth strap 44, that instead completes the encircling of wearer's head at the wearer's forehead region. Applicants note that posterior girth does not directly connect to cranial frame 22. Instead, posterior girth strap 44 connects to radial strap 38, which in turn has looped ends 40 and 42, through which the cranial frame 22 extends. There is no equivalent radial strap 38 in the

claimed invention because the encircling band 14 does not need to have additional elements located at the lower back portion of the wearer's head to hold the band in place.

The Office Action now further cites to the *Piontkowski* patent for disclosing head gear for a binocular microscope having a single encircling band. (Office Action, at 6, citing to Figs. 1 and 2 of the *Piontkowski* patent). Upon review of the *Piontkowski* patent, the extent of the disclosure relating to the disclosed head gear are the figures cited by the Office Action, and four lines of the specification noting that the "head harness" includes a padded member and straps that can be tightened by one of several different means. *Piontkowski*, col. 2, lines 36 to 40. There is no description about the head gear and what portions are rigid, such at element 20, and which elements are non-rigid, if any. There is no description, and limited disclosure regarding how the strap elements connect to the padded member 20, or whether the straps are integral and part of the padded member 20. More specifically, there is insufficient disclosure or information regarding the *Piontkowski* head gear to use it as a 103 reference in conjunction with *Mattes*, *Radna* or *Thomanek*. The reading of certain features into the *Piontkowski* figures is, at best, speculative.

Accordingly, the advantages of the subject matter of claims 1 through 18, including having a single, non-rigid element to substantially encircle the wearer's head at the wearer's forehead region are not attained or suggested by the *Thomanek* patent and/or the *Radna* patent application and/or the *Mattes* patent and/or the *Piontkowski* patent, either individually or in combination. As explained by Judge Rich in *In re Civitello*, 144 USPQ 10, 12 (CCPA 1964), when a claimed feature is not disclosed by the reference, the reference cannot render the claim obvious:

Since Haslacher fails to disclose the feature of the claim relied on, we do not agree with the patent office that it would suggest modifying the Craig bag to contain the feature. The Patent Office finds the suggestion, only after making a modification which is not suggested, as we see it, by anything other than appellant's own disclosure. This is hindsight reconstruction. It does not establish obviousness. (Emphasis in original.)

Thus, Applicants respectfully do not agree with the Examiner that the *Thomanek* patent, either individually or in combination with the *Radna* patent application and/or the *Mattes* patent and/or the *Piontkowski* patent, support a prima facie case of obviousness. Each of these cited

documents and disclosures fails to disclose at least one element claimed in the pending application, and do not in combination show, nor suggest each of the claimed elements of the pending application.

B. Dependent Claims

Because claims 2 through 18 depend directly from claim 1, or claims that are dependent upon claim 1, which Applicants contend is a patentable claim, then dependent claims 2 through 18 claims are also patentable. *See, e.g., In re McCarn*, 101 USPQ 411, 413 (CCPA 1954) (“sound law” requires allowance of dependent claims when their antecedent claims are allowed). Moreover, Applicants respectfully contend that claims 2 through 18 are each non-obvious in view of the applied references.

C. Conclusion

Claims 1 through 18 are presented. Claim 1 has been substantively amended to address the informality noted, as well as the bases for rejection cited in the Office Action. Applicants provide certain explanatory remarks and argument to detail the basis and reasoning for distinguishing these claims over the cited art. Applicants respectfully contend that the rejections under 35 U.S.C. § 103(a) should be withdrawn. Favorable action is earnestly solicited by Applicants. Finally, the Examiner is invited to call Applicants’ undersigned representative if any further action will expedite the prosecution of the application or if the Examiner has any suggestions or questions concerning the application or the present Response. In fact, if the claims of the application are not believed to be in full condition for allowance, for any reason, Applicants respectfully request the constructive assistance and suggestions of the Examiner in drafting one or

more acceptable claims pursuant to MPEP § 707.07(j) or in making constructive suggestions pursuant to MPEP § 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,

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Any response in this application requiring a petition for extension of time, but failing to include one, should be treated as though it does include the required petition for extension of time.